

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Caron Nazario	:	
	:	
	<i>Plaintiff,</i>	
v.	:	Civil Action No. 2:21-cv-00169
	:	
Joe Gutierrez, <i>In his personal capacity</i>	:	JURY DEMANDED BY
	:	PLAINTIFF
	:	
and	:	
Daniel Crocker <i>In his personal capacity,</i>	:	
	:	
	<i>Defendants.</i>	

**DEFENDANT DANIEL CROCKER’S MEMORANDUM OF LAW
IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE REFERENCES TO
METALLICA “RIDE THE LIGHTNING” ALBUM AND TITLE TRACK**

NOW COMES Defendant, Daniel Crocker (“Crocker”), by counsel, and hereby submits this Memorandum of Law in Support of his Motion in Limine to exclude references to Metallica’s “Ride the Lightning” album, title track, and/or song lyrics as irrelevant, non-probative and prejudicial evidence. For the reasons outlined below, Crocker requests this Court exclude the following evidence based on its irrelevance and that its probative value does not substantially outweigh the prejudice related to its admission.

I. BACKGROUND

In Caron Nazario’s (“Plaintiff”) Complaint, he alleges a variety of constitutional and common law tort claims arising from a traffic stop that took place on December 5, 2020, against Crocker and Joe Gutierrez (“Gutierrez”), both then officers with the Town of Windsor Police Department. Plaintiff alleges unreasonable seizure (Count I), excessive force (Count II), illegal search (Count III), violation of the First Amendment (Count IV), common law assault (Count V), common law battery (Count VI), common law false imprisonment (Count VII), and illegal search

in violation of Virginia Code § 19.2-59. This Court has ruled that Crocker and Gutierrez are entitled to qualified immunity on Counts I, II, and IV of the Plaintiff's Complaint and dismissed those Counts in their entirety with prejudice. This Court further ruled that Plaintiff is entitled to summary judgment against Crocker on Count III and VIII (illegal search), but withheld judgment against Gutierrez for a jury determination on bystander liability. The remaining common law tort claims under Virginia law – Counts V, VI, and VII – were reserved for a jury trial, which is scheduled to commence January 9, 2023.

In support of his claims against Crocker, Plaintiff is expected to seek to introduce evidence relating to the band Metallica and, more specifically, Metallica's 1984 album "Ride the Lightning" and its title track, including the album cover and song lyrics. Plaintiff's proposed evidence related to the band and issues before the Court must be excluded as irrelevant and because the probative value of such evidence is not substantially outweighed by its unfair prejudice. Furthermore, Plaintiff's Metallica references throughout his filings in this action to date serve no purpose other than sensationalism and attempts to distract from the true facts of this case.

II. STANDARD OF REVIEW /

Relevant evidence is evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. Relevant evidence, however, may be excluded when its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Fed. R. Evid. 403; Buckley v. Mukasey, 538 F.3d 306, 318 (4th Cir. 2008). Unfair prejudice occurs when "there is a genuine risk that the emotions of a jury will be excited to irrational behavior, and this risk is disproportionate to the probative value of the offered

evidence.” United States v. Williams, 445 F.3d 724, 730 (4th Cir. 2006) (internal quotation marks, alteration, and citation omitted).

III. ARGUMENT

A. Legal Conclusions Drawn from Metallica Lyrics/Songs/Album “Ride the Lightning”

Plaintiff is expected to introduce evidence relating to the band Metallica, including its lyrics/songs/albums, during the trial. Specifically, that relating to the band’s album/song “Ride the Lightning”, from which Plaintiff hopes the Court will take judicial notice that the title phrase is allegedly another way of saying “execution”. See, Plaintiff’s Pre-Trial Witnesses, Exhibit, and Discovery Designation Lisa, Doc. 135, ¶ IIA(78). In so arguing, Plaintiff seeks to persuade the trier of fact that Nazario understood the phrase’s use by Gutierrez on December 5, 2020, as “a threat on his life.” (Pl.’s Caron Nazario’s Opp’n to Def. Daniel Allen Crocker’s Mot. for Summ. J. at 6, ECF NO. 94; Compl. at ¶ 28, ECF NO. 1; Pl. Caron Nazario’s Opp’n to Def. Joseph Raymond Gutierrez’s Mot. for Summ. J. at 6, ECF NO. 95). The record clearly belies that suggestion that the phrase means “execution” and the introduction of such evidence would be highly prejudicial to Crocker by misleading the jury in a way that substantially outweighs the probative value.

As an initial matter, there is no connection between this case and Metallica’s “Ride the Lightning.” There is no evidence in the record that Plaintiff had any knowledge or was aware of either the band Metallica or the song “Ride the Lightning” to support his perception of Gutierrez’s actions the day in question, nor that Gutierrez meant “execution” other than references in the case record to the fact that Gutierrez has heard the phrase used in that context before and that “he likes Metallica”. (ECF NO. 78-7 at 109:23-110:16). Instead, Plaintiff seeks to retroactively apply his desired meaning for the phrase “ride the lightning” for purposes of this litigation by also citing to

the crowd-sourced¹ website, urbandictionary.com, (Compl. at 9 fn. 35, ECF NO. 1), which allows its users to submit their own definitions for various terms. Thus, while the urbandictionary.com meaning may read “[t]o be executed by electrocution. Most commonly, the electric chair,” that definition is far from widely accepted. As has already been pointed out by Crocker, the response, “ride the lightning” is a common reference to being tasered and was uttered by Gutierrez at the same time as Gutierrez holstered his firearm and drew his taser. (Def. Daniel Crocker’s Answer to Compl. at ¶ 28). If Plaintiff wants to appeal to pop culture (i.e., urbandictionary.com) in order to establish the meaning of “ride the lightning”, he might also consider watching the comedy movie *The Hangover*, a wildly popular movie from 2009.² Particularly, the scene where the protagonists participate in a taser demonstration by police for the benefit of school children.³ Before tasing Zach Galifianakis’ character, Rob Riggle’s police officer character tells the school child aiming the taser at Galifianakis: “don’t be afraid to *ride the lightning*.” The depositions of Crocker and Gutierrez confirmed the phrase refers to a taser. (Crocker Dep. at 66:15-19, Gutierrez Dep. at p. 109). And “ride the lightning” is also, as previously pointed out by Crocker, used by the U.S. Army Reserve, of which Plaintiff is a member, to refer to a tasing. (Def. Daniel Crocker’s Resp. Br. In Opp’n to Pl. Mot. for Summ. J. at ¶ 28, ECF NO. 90).

¹ <https://www.urbandictionary.com/define.php?term=define%20your%20world>

² The Hangover grossed \$469.3 million in box office receipts worldwide with \$277.3 million domestically in the USA. See Wikipedia “The Hangover”, https://en.wikipedia.org/wiki/The_Hangover; Rotten Tomatoes, <https://www.rottentomatoes.com/m/10010667-hangover> (last visited November 8, 2022 at 4:01pm)

³ <https://www.bing.com/videos/search?q=the+hangover+ride+the+lightning+youtube&view=detail&mid=02BD5CCC79F22BCF893E02BD5CCC79F22BCF893E&FORM=VIRE> (last visited November 8, 2022 at 4:01PM)

Given the above, Plaintiff must be excluded from making any references to Metallica, the album “Ride the Lightning,” or to the album’s title track, and excluded from drawing any legal conclusions from Metallica lyrics/songs/albums, including that the phrase “ride the lightning” means “execution”. Such would be prejudicial, confusing, and would mislead the jury.

B. Mentioning the band Metallica or introduction of song lyrics and/or tour dates

Plaintiff is expected to introduce Metallica song lyrics and/or Metallica tour dates as evidence in order to support the causes of action against Defendants, as well as Plaintiff’s understanding of the alleged threat by Gutierrez against him (i.e., that “ride the lightning” allegedly means to “execute”). Per Rule 403 of the Federal Rules of Evidence, the probative value of such evidence would clearly be outweighed by the prejudicial effect.

Plaintiff relies solely on Metallica’s use of the phrase “ride the lightning” for a tenuous connection with the events in question before this Honorable Court, along with Gutierrez’s apparent familiarity therewith, to justify its relevance. Such a fragile probative connection does not justify the prejudicial effect of the powerful and violent themes that run through some of Metallica’s music, particularly the songs from before Plaintiff was born.

Therefore, given the above, Plaintiff must be excluded from mentioning the band Metallica, or introducing song lyrics and/or tour dates. Such would be prejudicial, confusing, and would mislead the jury.

IV. CONCLUSION

For the reasons set forth above, Crocker respectfully requests this Court to sustain his Motion in Limine and to exclude from the trial references to Metallica's "Ride the Lightning" album and its title track.

Respectfully submitted this 14th day of November, 2022.

DANIEL CROCKER

By: /s/ Anne C. Lahren

Robert L. Samuel, Jr., Esq.
Virginia State Bar No. 18605
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
(757) 502-7338 – Telephone
(757) 497-1914 – Facsimile
Email: rsamuel@pendercoward.com
Counsel for Daniel Crocker

Richard H. Matthews, Esq.
Virginia State Bar No. 16318
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
(757) 490-6256 – Telephone
(757) 497-1914 – Facsimile
Email: rmatthew@pendercoward.com
Counsel for Daniel Crocker

Anne C. Lahren, Esq.
Virginia State Bar No. 73125
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
(757) 490-6293 – Telephone
(757) 497-1914 – Facsimile
E-Mail: alahren@pendercoward.com
Counsel for Daniel Crocker

Bryan S. Peebles, Esq.
Virginia State Bar No. 93709
Pender & Coward, P.C.

222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
(757) 490-6283 – Telephone
(757) 5020-7380 – Facsimile
E-Mail: bpeeples@pendercoward.com
Counsel for Daniel Crocker

CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of November, I will electronically file the foregoing *MEMORANDUM OF LAW IN SUPPORT OF MOTION IN LIMINE* with the Clerk of Court using the CM/ECF system, which will then notification of such electronic filing (NEF) to the following:

Jonathan M. Arthur, Esq (VSB# 86323)
j.arthur@robertslaw.org
Thomas H. Roberts, Esq. (VSB# 26014)
Tom.roberts@robertslaw.org
Andrew T. Bodoh, Esq. (VSB# 80143)
Andrew.bodoh@robertslaw.org
15 South First Street
Richmond, VA 23219
(804) 991-4308 (Direct)
(804) 783-2000 (Firm)
(804) 783-2105 (Fax)
Counsel for the Plaintiff

John B. Mumford, Jr. (VSB No. 38764)
Coreen A. Silverman (VSB No. 43873)
Jessica A. Swauger (VSB No. 89612)
HANCOCK, DANIEL & JOHNSON, P.C.
4701 Cox Road, Suite 400
Glen Allen, Virginia 23060
Telephone: (804) 967-9604
Facsimile: (804) 967-9888
jmumford@hancockdaniel.com
csilverman@hancockdaniel.com
Counsel for Defendant Joe Gutierrez

/s/ Anne C. Lahren
Anne C. Lahren, Esq.
Virginia State Bar No. 73125
Pender & Coward, P.C.
222 Central Park Avenue, Suite 400
Virginia Beach, VA 23462-3026
(757) 490-6293 – Telephone
(757) 502-7370 – Facsimile
Email: alahren@pendercoward.com
Counsel for Daniel Crocker